



STATE OF DELAWARE


PUBLIC SERVICE COMMISSION
861 SILVER LAKE BLVD.
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE:
FAX:

(302) 736-7500
(302) 739-4849

MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Lisa B. Driggins, Public Utilities Analyst 

DATE: December 22, 2017

SUBJECT: IN THE MATTER OF THE APPLICATION OF BIRCH COMMUNICATIONS OF THE NORTHEAST, INC. FOR CONSENT TO AN INTRACORPORATE REORGANIZATION AND NOTICE BY NETWORK BILLING SYSTEMS, LLC OF A PROPOSED CHANGE TO ITS OWNERSHIP AND INTENT TO PARTICIPATE IN NEW FINANCING ARRANGEMENTS.
(FILED DECEMBER 4, 2017) - DOCKET- NO. 17-1192

Application:

On December 4, 2017, pursuant to 26 *Del. C.* § 215 and the rules of the Delaware Public Service Commission ("PSC" or "Commission"), Birch Communications of the Northeast, Inc. ("BCNE")¹, and Network Billing Systems, LLC ("NBS"),² collectively, the "Parties," submitted an application requesting that the Commission: (i) grant authority, to the extent that approval is required, for BCNE to participate in a *pro forma* intracorporate reorganization of the Birch Companies; and (ii) take note that NBS proposes a change to its ownership and to participate in related financing (the "Application"). The Parties filed the Application jointly due to a single merger transaction (the "Merger") that will result in the transfer of an indirect controlling interest in NBS (the "Transaction"). The Merger and Transaction are described in greater detail below.

Applicants:

BCHI Holdings, LLC

¹ BCNE, together with its parent, Birch Communications, Inc. ("BCI") and their affiliated operating companies (the "Birch Companies" or "Birch").

² NRS, together with its parent, Fusion Telecommunications International, Inc. ("FTI") and other Fusion operating companies (the "Fusion Companies" or "Fusion").

BCHI Holdings, LLC ("BCHI Holdings") is a Georgia limited liability company, with a principal office at 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. BCHI Holdings was recently formed by the shareholders of Birch Communications Holdings, Inc. ("Birch Holdings") to hold the shares of FTI to be issued in connection with the Merger. Birch Holdings is the current parent of BCI.

BIRCH COMMUNICATIONS, INC.

BCI is a Georgia corporation, with principal offices at 320 Interstate North Parkway SE, Atlanta, GA 30339. Currently, BCI is a direct subsidiary of Birch Holdings and the parent company of BCNE. Upon closing of the Transaction, BCI will become an indirect, wholly owned subsidiary of FTI. BCI has filed an application with the Commission for authority to provide local exchange and interexchange services (PSC Docket No. 17-1171).

BIRCH COMMUNICATIONS OF THE NORTHEAST, INC.

BCNE is a Delaware corporation also located at 320 Interstate North Parkway SE, Atlanta, GA 30339. BCNE is authorized by the Commission to provide competitive local exchange carrier and interexchange carrier services pursuant to order No. 7859 issued in PSC Docket No. 10-262 (Nov. 10, 2010). As a result of the intracorporate reorganization discussed herein, BCNE will not become a subsidiary of FTI following the closing of the Merger; however, BCNE's intermediary ownership will change.

FUSION TELECOMMUNICATIONS INTERNATIONAL, INC.

FTI is a publicly traded Delaware corporation, with its headquarters located at 420 Lexington Avenue, Suite 1718, New York, NY 10170. FTI holds Section 214 authority from the Federal Communications Commission (the "FCC") to provide interstate and international telecommunications services. FTI does not hold authority to provide intrastate telecommunications services within any state.

NETWORK BILLING SYSTEMS, LLC d/b/a FUSION

FTI's wholly-owned indirect subsidiary, NBS d/b/a Fusion, is a New Jersey limited liability company with corporate headquarters located at 695 U.S. Route 46 West, Fairfield, NJ 07004. NBS provides UC and hosted voice and data services, broadband Internet access service, interconnected VoIP, data networks, and traditional voice solutions primarily to business customers throughout the United States. In Delaware, the Commission authorized NBS to operate as an interexchange telecommunications service provider in Docket No. 98-398 on December 15, 1998. Additionally, NBS holds authority to offer intrastate telecommunications services in 46 other states. NBS also holds Section 214 authority from the FCC to provide interstate and international telecommunications services.

Merger and Transaction:

The Merger will involve an intracorporate reorganization of the Birch Companies, resulting in a non-material change to the intermediary ownership of BCNE and the transfer of an

indirect controlling interest in NBS. NBS further intends to participate in new financing arrangements to be entered into by FTI in connection with the closing of the Transaction.

Through the Transaction, the Birch Companies and the Fusion Companies intend to combine their business services and cloud services operations. As a result of the Transaction, BCHI Holdings will acquire majority interests in, and control of, the Fusion Companies, including NBS. An indirect twenty-five percent (25%) minority interest in certain of the Birch Companies will be acquired by the stockholders of FTI as of the closing of the Merger. In connection with the Transaction, Birch also will restructure its operations to enable a spin-off of its consumer and single-line business customers to the existing shareholders of Birch.

Financing Arrangement:

NBS is going to participate in a financing arrangement. NBS has elected to be regulated pursuant to Subchapter VII-A, Chapter 1, of Title 26 of the Delaware Code. Accordingly, none of the financing arrangements requires Commissions approval.

Public Interest:

The Parties submit that the intracorporate reorganization of the Birch Companies will serve the public interest. The proposed restructuring will generally strengthen the Birch Companies' ability to serve their respective customer groups and, of significant importance, will facilitate consummation of the proposed Transaction. The Transaction will serve the public interest by creating a major national cloud and business services provider, thereby bringing significant benefits to customers of the combined companies and to the communications marketplace in Delaware. The Transaction will result in the creation of one of the largest, publicly-traded cloud service providers in North America and a leader in the \$200 billion cloud services market. Fusion and Birch are each well-established communications service providers with decades of experience operating in the U.S. communications markets. The financial, technical, and managerial qualifications of these companies are a matter of record with the Commission, which has reviewed their respective qualifications to operate and own regulated telecommunications carriers on previous occasions.

Fusion and Birch customers will not be harmed in any manner by the Transaction and the associated reorganization. Subscribers to the business and cloud services offered today by NBS and the Birch Companies will continue to receive those services under New Fusion-Birch. Customers of Birch's Consumer Business services will continue to receive their services without interruption. As a result, neither Fusion customers nor Birch customers should experience any disruption of, or diminishment to, their existing services. The Transaction also will not adversely impact competition in the Delaware and national telecommunications market.

Staff's Recommendation:

Applications seeking approval for this type of Transaction by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 *Del. C.* §215 because the companies are deemed to be public utilities. The Applicants have represented that the proposed Transaction is in accordance with the law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications for approval of changes in control to become effective by statutory approval without Commission action. The result seems appropriate in this matter. Staff, therefore, recommends that the Commission not act on this application. Under 26 *Del. C.* §215(d), the effect will be that the application is deemed to be approved by the Commission. Staff also will acquire Applicants' verification that the proposed Transaction has been completed.